United Nations S/2011/25

Security Council

Distr.: General
19 January 2011

Original: English

Letter dated 18 January 2011 from the Permanent Representative of Tajikistan to the United Nations addressed to the President of the Security Council

In my capacity as the Chair of the Organization of the Islamic Conference at the United Nations, I have the honour, on behalf of the Member States of the Group, to inform you that I have been authorized to request you to add the list below to the list of co-sponsors of the draft resolution entitled "Israeli settlement activities in the Occupied Palestinian Territory, including East Jerusalem", presented on 18 January 2011 by Lebanon in the Security Council, on behalf of the following States members of the Organization of the Islamic Conference:

Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Benin, Brunei Darussalam, Burkina Faso, Cameroon, Chad, Comoros, Côte d'Ivoire, Djibouti, Egypt, Gabon, Gambia, Guinea, Guinea-Bissau, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libyan Arab Jamahiriya, Malaysia, Maldives, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Tunisia, Turkmenistan, Turkey, Uganda, United Arab Emirates, Uzbekistan and Yemen.

Furthermore, Palestine, a full member of the Organization of the Islamic Conference, would have joined the list of co-sponsors, had the provisional rules of procedure of the Security Council allowed such co-sponsorship.

I should be grateful if you would arrange to have the present letter distributed as a document of the Security Council, under the agenda item entitled "The situation in the Middle East, including the Palestinian question".

(*Signed*) Sirodjidin M. **Aslov**
Chair of the Organization of the Islamic Conference Group
Ambassador
Permanent Representative of the Republic of Tajikistan
to the United Nations

11-21107 (E) 190111

Please recycle

United Nations S/2011/26

Security Council

Distr.: General
5 January 2011

Original: English

Report of the Secretary-General concerning the credentials of the alternate representatives of Colombia on the Security Council

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received credentials from the Minister for Foreign Affairs of Colombia, signed on 5 January 2011, stating that Mrs. Betty Escorcia, Ms. María Paula Guerra, Mr. Juan Felipe Rengifo and Mr. Germán Calderón have been appointed alternate representatives of Colombia on the Security Council.

In the opinion of the Secretary-General, these credentials are in order.

11-21229 (E) 210111

Please recycle

United Nations S/2011/27

Security Council

Distr.: General
24 January 2011

Original: English

Letter dated 19 January 2011 from the Secretary-General to the President of the Security Council

I have the honour to refer to Security Council resolution 1945 (2010) concerning the Sudan, adopted on 14 October 2010, by which the Security Council decided to extend until 19 October 2011 the mandate of the Panel of Experts originally appointed pursuant to resolution 1591 (2005) and previously extended by resolutions 1651 (2005), 1665 (2006), 1713 (2006), 1779 (2007), 1841 (2008) and 1891 (2009), and requested me to take the necessary administrative measures.

Accordingly, I wish to inform you that I have appointed the following experts to serve on the Panel of Experts:

Mr. Michael Lewis, United Kingdom of Great Britain and Northern Ireland (aviation)
Mr. Hesham Nasr, Egypt (international humanitarian law)
Mr. Rajiva Sinha, India (finance)

Two additional experts will be appointed shortly.

I have also designated Mr. Sinha to serve as coordinator of the Panel of Experts.

I should be grateful if you would bring this information to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

11-21413 (E) 240111

Please recycle

United Nations A/65/694–S/2011/28

General Assembly
Security Council

Distr.: General
25 January 2011

Original: English

General Assembly
Sixty-fifth session
Agenda item 34
Protracted conflicts in the GUAM area and their implications for international peace, security and development

Security Council
Sixty-sixth year

Identical letters dated 21 January 2011 from the Permanent Representative of Georgia to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to transmit the annexed statements of the Ministry of Foreign Affairs of Georgia concerning the discrimination against ethnic Georgians and violation of their property rights in occupied Abkhazia and the ratification of the agreements on the promotion and mutual protection of capital investments between the Government of the Russian Federation and the proxy regimes of Abkhazia and the Tskhinvali region.

I should be grateful if the present letter and its annex could be circulated as document of the sixty-fifth session of the General Assembly, under agenda item 34, and of the Security Council.

(*Signed*) Ambassador Alexander **Lomaia**
Permanent Representative

11-21720 (E) 280111

Please recycle

Annex to the identical letters dated 21 January 2011 from the Permanent Representative of Georgia to the United Nations addressed to the Secretary-General and the President of the Security Council

Statement of the Ministry of Foreign Affairs of Georgia on the ratification of the agreements on the promotion and mutual protection of capital investments between the Government of the Russian Federation and the proxy regimes of Abkhazia and the Tskhinvali region

On 8 and 23 December 2010, the President of Russia, D. Medvedev, signed federal laws of the Russian Federation on the ratification of the so-called agreements on the promotion and mutual protection of capital investments between the Government of the Russian Federation and the proxy regimes set up by Russia on the occupied territories of Georgia.

It needs to be emphasized that the so-called agreements have been granted a retroactive force and hence, they apply to investments made with respect to the Tskhinvali region from 1 January 1992 and with respect to Abkhazia from 1 January 1994.

International law stipulates that any agreement concluded between an occupant country and proxy regimes created by such country is null and void given that so-called South Ossetia and Abkhazia are not subjects of international law and these territories are universally recognized as integral parts of Georgia.

Based on the texts of the aforesaid agreements and explanatory notes and conclusions attached thereto, Russia in fact recognizes that in defiance of its international commitments and in complete disregard for the sovereignty of Georgia, it has been carrying out illegal economic activity in the so-called conflict zones since the 1990s, establishing relations with the proxy regimes as independent entities.

Hence, as the Georgian side has stated repeatedly, the claims of Russian officials that they used to respect Georgia's sovereignty and territorial integrity and were only "forced" in August 2008 to recognize the so-called republics of Abkhazia and South Ossetia are just attempts to lead into error the international community and the Russian community itself and legitimize their own virtual new reality.

The aforesaid provides further proof that since the 1990s the Russian Federation has been consistent in its efforts to destroy Georgian statehood, seize and annex its integral parts and carry out a policy of multiple ethnic cleansing, which in 2008 culminated in full-scale military aggression and occupation of Georgia's inalienable territories.

Tbilisi, 13 January 2011

Statement of the Ministry of Foreign Affairs of Georgia on the discrimination against ethnic Georgians and violation of their property rights in occupied Abkhazia

Electronic media sources spread reports on the discriminative decision adopted at a regular session of the so-called commission "to secure legality while resolving property rights of Russian citizens in Abkhazia" held in occupied Sukhumi, in December 2010.

By decision of the so-called commission co-chaired by G. Enik, chief of the so-called "president's administration" and S. Grigoriev, so-called "ambassador" of the Russian Federation in Abkhazia, applications of ethnically Georgian citizens of Russia on their property rights will be rejected by the commission. This decision was made public by the Russian Federation's official D. Visherniov, second secretary of the so-called "embassy".

This decision makes it obvious that Russia, acting in defiance of its domestic laws and the norms and principles of international law, employs an ethnically based discriminative approach against its own citizens. Such approach once again indicates that Russia's policy against Georgia and ethnic Georgians contradicts the standards of international law and human rights law and is nothing else but persecution along ethnic lines. Under such circumstances it is little wonder that multiple ethnic cleansing of the Georgian population has been taking place on Russia's occupied territories since the 1990s and the facts of persecution and discrimination involving citizens of Georgia and ethnic Georgians were reported on the Russian territory itself in 2006. Of particular concern is the fact that Russia is insistent in its efforts to establish its fascist policy in the international arena.

The international community unanimously supports the unconditional and dignified return of internally displaced persons from Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia to the places of their origin and the inviolability of their property in the occupied territories, to which attest a great number of resolutions and decisions adopted in the framework of the United Nations.

Against such background, the activity of the so-called commission in Georgia's occupied territories can be described as an attempt of the two criminal-fascist gangs to divide the plundered property between them.

Tbilisi, 13 January 2011

United Nations S/2011/29

Security Council

Distr.: General
24 January 2011

Original: English

Letter dated 21 January 2011 from the Ombudsperson addressed to the President of the Security Council

I have the honour to submit herewith the first report of the Office of the Ombudsperson, pursuant to paragraph 15 (c) of annex II to Security Council resolution 1904 (2009), which indicates that the Ombudsperson shall submit biannual reports to the Security Council summarizing her activities. The report describes the activities of the Office of the Ombudsperson in its first six months of operation, between 14 July 2010 and 15 January 2011.

I would appreciate it if the present letter and its annex were brought to the attention of members of the Security Council and issued as a document of the Council.

(*Signed*) Kimberly **Prost**
Ombudsperson

11-21502 (E) 030211

Please recycle

Annex

Report of the Office of the Ombudsperson pursuant to Security Council resolution 1904 (2009)

I. Background

1. The Office of the Ombudsperson was established for an initial period of 18 months by Security Council resolution 1904 (2009), adopted on 17 December 2009, inter alia, to assist the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities (also known as the Al-Qaida and Taliban Sanctions Committee), when considering de-listing requests. The mandate of the Office of the Ombudsperson is set out in detail in annex II to resolution 1904 (2009).

2. The Secretary-General appointed Judge Kimberly Prost Ombudsperson on 3 June 2010. The Ombudsperson formally commenced her functions on 14 July 2010.

II. Summary of activities — development of the Office of the Ombudsperson

General

3. To effectively carry out the mandate of the Security Council, the Office of the Ombudsperson (the Office) must be built upon certain key principles, the most notable of which are independence and accessibility. The initial work of the Ombudsperson focused on the development of the Office in accordance with those principles.

Procedures and research

4. Annex II of Security Council resolution 1904 (2009) sets out in some detail the process to be followed by the Ombudsperson in considering and processing requests for de-listing. To ensure that potential petitioners have a clear understanding of the process and are aware of the steps to be taken and to safeguard consistency in implementation, practices and procedures have been developed, and information about them disseminated, to further concretize the process. Work on developing these procedures formed the core of the initial activities of the Ombudsperson. As an example, documents outlining the procedures for de-listing requests and describing the application process were created and made publicly available. Copies of the documents can be found in appendix I to the present report.

5. Time has also been dedicated to the review and analysis of relevant jurisprudence, articles and reports. Taking this material into account, the practices, procedures and policy of the Office were elaborated to maximize the elements of fairness and due process and to address concerns expressed in that regard. In an effort to better define relevant international standards and to access pertinent experience, the Ombudsperson also met with judges in national, regional and international courts, skilled in areas such as counter-terrorism sanctions implementation, domestic listing regimes and the handling of confidential

information. She has also discussed general legal issues of relevance with counsel in the United Nations Office of Legal Affairs and with experts from, inter alia, the Counter-Terrorism Executive Directorate and the Office of the United Nations Ombudsman and Mediation Services. The Ombudsperson also met with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, in order to exchange views on relevant issues related to the Al-Qaida and Taliban sanctions regime and the role of the Ombudsperson.

Interaction with the Al-Qaida and Taliban Sanctions Committee and the Monitoring Team

6. The Ombudsperson appeared before the Al-Qaida and Taliban Sanctions Committee (the Committee) on two occasions: in July 2010, for an introduction to the Committee members, and in December 2010, for a general discussion on recent developments and to provide an update on the progress of her work. In addition, as detailed below, the Ombudsperson met bilaterally with individual Committee members. As outlined in appendix II, the Ombudsperson has provided a number of written updates to the Committee in relation to various cases.

7. The Ombudsperson has also met with the Coordinator and members of the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004) and extended by resolution 1904 (2009) concerning Al-Qaida and the Taliban and associated individuals and entities (the Monitoring Team). On an operational level, there is ongoing communication with various experts in the Monitoring Team, as appropriate to particular cases. The Monitoring Team continues to provide the Ombudsperson with relevant information in individual cases in accordance with paragraph 3 of annex II to resolution 1904 (2009).

Outreach and publicizing of the Office of the Ombudsperson

8. As an important step towards accessibility, the existence and role of the Office needs to be made known, especially to individuals and entities interested in pursuing de-listing. For that reason, the Ombudsperson has undertaken a number of activities aimed at publicizing the mandate and work of the Office.

9. A general press briefing was held on 15 July 2010, when the Ombudsperson took office, and since then interviews have been provided, upon request, to various media outlets in the United States of America, Canada and Europe.

10. The Ombudsperson delivered remarks on the work of her office at intergovernmental meetings, including the annual informal meeting of Legal Advisers of the Ministries of Foreign Affairs of States Members of the United Nations on 25 October 2010; an European Union/United Nations seminar on the effective implementation of United Nations sanctions, organized by Belgium in cooperation with the General Secretariat of the Council of the European Union and the European Commission, in Brussels on 29 and 30 November 2010; and an open briefing to Member States in New York on 15 December 2010.

11. The Ombudsperson also gave presentations at various public meetings, including the Annual Conference of the International Bar Association in October 2010 and a seminar on United Nations sanctions, co-hosted by the Canadian Civil

Liberties Association, the David Asper Centre for Constitutional Rights and the International Human Rights Program of the University of Toronto in November 2010.

12. Material describing the role of the Ombudsperson and the de-listing application process has been provided to the Monitoring Team for dissemination, as appropriate, in the course of field missions.

Liaison with States, intergovernmental organizations, United Nations bodies and non-governmental organizations

13. In recognition of the critical need for State cooperation with the Ombudsperson, and the important role of States in the dissemination of information about the Office, the Ombudsperson has initiated bilateral and multilateral consultations with approximately 40 Member States. This has included meetings with all members of the Al-Qaida and Taliban Sanctions Committee, as composed in 2010 and 2011,[1] the informal group of like-minded States on targeted sanctions,[2] and various interested States or those of frequent or particular relevance to the work of the Office. She has also met with representatives of the European Union.

14. Similarly, the Ombudsperson has liaised with representatives of the United Nations Office on Drugs and Crime and has provided a general briefing on her work to the Counter-Terrorism Committee Executive Directorate with the aim of encouraging dissemination of information in the course of missions conducted by those bodies. She has also met with the Special Representative of the Secretary-General for Afghanistan and members of the United Nations Assistance Mission in Afghanistan in order to familiarize them with the work of the Office.

15. The Ombudsperson also considers that relationships with civil society and non-governmental organizations (NGOs), in particular those working in the human rights and sanctions field, are important for constructive input on the functioning of the Office and for the broader dissemination of information about the Ombudsperson's work. To that end, the Ombudsperson has met with academics and representatives of NGOs in order to establish working relationships and exchange ideas and information.[3]

Website

16. An independent website was established for the Office of the Ombudsperson (http://www.un.org/en/sc/ombudsperson/). The website provides key information on the operations of the Office, including a description of the procedure to consider de-listing requests and general directions on the content of applications submitted to the Ombudsperson. While relevant links are included to, inter alia, the Security Council and the Al-Qaida and Taliban Sanctions Committee, the website functions as a stand-alone site in recognition of the independent nature of the Office.

---

[1] Austria, Bosnia and Herzegovina, Brazil, China, Colombia, Costa Rica, France, Gabon, Germany, India, Japan, Lebanon, Mexico, Nigeria, Portugal, the Russian Federation, South Africa, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States.

[2] Comprising Austria (as of January 2011), Belgium, Costa Rica, Denmark, Germany, Finland, Liechtenstein, the Netherlands, Norway, Sweden and Switzerland.

[3] These have included Cordaid, the Netherlands Institute of International Relations, the Global Policy Forum, International Peace Initiatives, and the Watson Institute for International Studies at Brown University.

III. Summary of activities — de-listing cases

General

17. In accordance with Security Council resolution 1904 (2009), the primary activities of the Ombudsperson have focused on de-listing requests submitted by individuals or entities.

18. Cases submitted to the Ombudsperson are considered and reviewed on a confidential basis. Unless a petitioner chooses to publicly disclose the existence of a request for de-listing, the Ombudsperson will not provide information as to the identity of any petitioner. If the petitioner makes a request public, the Ombudsperson will only confirm the existence of the request and provide general information as to the status of the case. However, the Ombudsperson will not publicly comment on the details of any pending case.

19. To the knowledge of the Ombudsperson, no petitioner has made an application to the Ombudsperson known publicly. As a consequence, only general information is provided in the present report in respect of the individual cases.

De-listing cases/case inquiries

20. As at 15 January 2011, seven (7) requests for de-listing were submitted to the Ombudsperson. Six (6) of those were accepted and are currently at various stages of the process provided for in annex II to Security Council resolution 1904 (2009). A description of the status of the cases is contained in appendix II to the present report. A seventh case is currently under discussion with the petitioner and it is anticipated that it will be distributed to the Committee in February.

21. Five (5) of the six (6) accepted cases have been brought by individuals and one (1) by an entity. In three (3) of the six (6) cases, the petitioner is assisted by legal counsel. All six (6) cases involve individuals and entities listed for association with Al-Qaida. The Ombudsperson has also engaged in dialogue and answered questions with respect to other cases which may result ultimately in de-listing requests.

Working methods and standards

22. In accordance with the expressed intent of Security Council resolution 1904 (2009) to ensure fairness and clarity in the Al-Qaida and Taliban sanctions regime, the Ombudsperson has focused on developing working methods and standards that will aid the Committee in achieving this goal.

23. In particular, the aim is to make maximum use of the accorded mandate to provide fair and due process to petitioners. To that end, the Ombudsperson is using the information-gathering and dialogue phases of the procedure to draw out as much relevant information about the specific cases as possible, from States and other relevant sources and, while strictly adhering to any confidentiality constraints, presenting that information to the petitioner in order that he or she can be fully informed of the case against him or her. The petitioner is subsequently afforded the opportunity to present a response to that case through written submissions or in the course of a written and/or oral dialogue with the Ombudsperson. The response to the case, amplified through questions that are put by the Ombudsperson, will then be reflected in the report which is submitted to the Committee. In this way, the petitioner is given an opportunity to be heard by the Committee.

24. To date, only two (2) cases have reached the dialogue stage, and one (1) of those only in the second week of January. However, the working method described in paragraph 23 above is being followed and in the first case there has been a significant amount of information gathered from States and shared with the petitioner.

25. An essential issue still under consideration is the setting of a standard for analysis by the Ombudsperson. Fair process demands that the information gathered by the Ombudsperson be assessed in relation to a defined standard in order to ensure consistency and objectivity of analysis. Work is ongoing to develop a standard that properly reflects the serious nature and particular context of decisions of the Al-Qaida and Taliban Sanctions Committee and at the same time recognizes the significant effect of the sanctions on listed individuals and entities.

26. While no comprehensive reports have yet been submitted to the Committee, the Ombudsperson is currently in the process of preparing the comprehensive report in the first case, which will be provided to the Committee at the end of February. The summary of information in the report will rely on material obtained from States, the petitioner, the Monitoring Team and independent research. However, the analysis and observations, as well as the outline of principal arguments, will be prepared independently by the Ombudsperson.

State cooperation

27. In the six (6) ongoing cases, twenty-five (25) requests for information have been sent to seventeen (17) States. In the first case, responses have been received from all the States to which requests were directed. Some States have provided additional material by way of further communications, either of their own initiative or in response to questions posed by the Ombudsperson. Responses to some follow-up requests for additional details and clarification are still pending.

28. In the second case, responses have been received from all but one State. There have been ongoing discussions with representatives of that State and it is clear that work on preparing a response, including to detailed questions posed by the Ombudsperson, is ongoing. The preparation of a response to a detailed request for further information sent by the Ombudsperson to one other State is also in progress.

29. In the remaining four (4) cases, the initial or extended periods for information-gathering have not yet been concluded, such that replies are still to be provided.

Dialogue with the petitioner

30. Several of the cases have been preceded by informal contacts between the Ombudsperson and the potential petitioner or legal counsel by letter, e-mail and telephone.

31. Discussions after the presentation of a de-listing request have only occurred in the first case where the extended dialogue phase will end in February. In that case, preliminary clarification of an issue was sought and received after the petition was distributed, a detailed list of questions was sent to the petitioner via e-mail at the start of the dialogue phase and a face-to-face interview has been conducted with the petitioner and his lawyer. There is ongoing e-mail communication as a follow-up to those questions and the interview.

32. A list of questions for the petitioner is being prepared in the second case. No other case has reached the dialogue phase yet.

Access to classified or confidential information

33. One of the major challenges in the work of the Ombudsperson is the issue of access to classified or confidential information. To the extent that any listing is dependent on such material, this question of access is a critical one for due process. At the same time, there are complex legal and policy questions for the States that possess the material, which need to be addressed for the information to be shared with the Ombudsperson, even in a restricted or confidential manner. As a result, discussions with the States that are most frequently implicated in this issue are ongoing. For practical reasons, the issue is being approached on two levels.

34. For the initial petitions, where time is of the essence, the Ombudsperson is addressing the matter with the relevant State or States on an individual, case-by-case basis, to the extent that the question arises on the facts of the case.

35. However, in the long term, there needs to be a broader-based solution, hopefully encompassing a mechanism, such as an agreement or assurances, on the basis of which classified or confidential information can be shared with the Ombudsperson, as necessary and relevant. Work towards the development of such arrangements is continuing as a priority matter.

IV. Other activities

Notifications of listing

36. In accordance with paragraph 15 (b) of annex II to Security Council resolution 1904 (2009), when an individual or entity is added to the list and relevant States have been notified, the Ombudsperson is to send a notification directly to that individual or entity if there is a known address.

37. Between 14 July 2010 and 15 January 2011, the period during which the Ombudsperson has been in office, twelve (12) entries have been added to the Consolidated List of the Al-Qaida and Taliban Sanctions Committee, corresponding to 11 individuals and 1 entity. Each of these listings has been considered with reference to the question of notification.

38. In the case of Mohammad Ilyas Kashmiri (QI.K.284.10.) an address of possible sufficiency was identified and a notification letter was sent to him on 18 August 2010, after receiving confirmation that the relevant States had been advised of the listing. In the remaining eleven (11) cases, no address was available or the address information provided was insufficiently detailed for any reasonable prospect that the notification would reach the addressee.

39. Having determined that the intention of the Security Council, in this particular mandate, was to provide for an independent notification procedure, additional steps have been taken to extend that notification to other listed individuals and entities. The fifteen (15) listings which occurred after the establishment of the Office but before the incumbent took office have been reviewed, although none contained sufficient address information for a notification to be sent.

40. For fairness and equality of process, and to further publicize the existence of the Office, the Ombudsperson is also in the process of sending notification letters to all other listed individuals or entities for which address information is available. Those efforts are ongoing, with 111 individuals and entities having thus far been identified for receipt of a notification.

Miscellaneous matters

41. The Ombudsperson has also responded to various requests for information about the Al-Qaida and Taliban Sanctions Committee and has provided public material in answer to such requests, as appropriate. This has included assistance to States seeking information or clarifications.

V. Future work

42. In the remaining six months of the current mandate, the priority activity will continue to be case work. While it is not possible to predict the volume with any certainty, based on developments in the initial six months of operation, the case load by the end of the initial mandate will likely be in the range of 10 to 15 active petitions.

43. As mentioned in paragraph 33 above, one of the priority matters in the coming months will be the development of arrangements for access to classified or confidential information.

44. As well, the Ombudsperson will continue to focus on outreach, in particular developing additional methods to reach individuals and entities in isolated locations, without ready access to communications facilities and technology.

45. The Ombudsperson will continue to liaise with States, intergovernmental and non-governmental organizations and United Nations bodies and will provide periodic briefings to Member States. Opportunities for outreach to civil society and the public generally will also be pursued as appropriate.

VI. Observations and conclusions

46. At this early stage, the observations which can be made as to the effectiveness of the procedure and the challenges encountered are very limited. This is particularly the case since no petition has yet been fully considered in accordance with the procedure set out in annex II to Security Council resolution 1904 (2009). However, even within the first six-month period, there are some obvious issues which merit mention at this stage.

Cooperation of States

47. The effectiveness of the work of the Ombudsperson and the ability to provide detailed information and thorough analysis and observations to assist the Committee is heavily dependent on the cooperation of States. To date, States involved in the initial cases have been cooperative in responding to requests and providing information. Any difficulties in that respect have arisen from the complexities of the cases, the type of information which is needed for proper analysis and questions of access to classified material, as opposed to any issue of non-cooperation. It would

be useful if the need for continued cooperation with the Office of the Ombudsperson, on the part of all States — not just members of the Committee — could be reinforced and encouraged.

Mandate for follow-up to de-listing

48. Some of the cases brought to the attention of the Ombudsperson have involved matters directly related to the operation of the Al-Qaida and Taliban sanctions regime, but, strictly speaking, outside the defined mandate of the Ombudsperson. In particular, cases have been raised where individuals who have been de-listed by the Committee continue to face financial and travel restrictions, ostensibly on the basis of their listing by the Al-Qaida and Taliban Sanctions Committee. Similarly, cases of individuals with similar names to those included on the Consolidated List, who are clearly not the listed person yet face resulting impediments, have also been identified. While these matters can be addressed domestically or on a bilateral basis, it seems a natural extension of the powers of the Office to specifically authorize the Ombudsperson to monitor and follow up on such cases to ensure that Al-Qaida and Taliban sanctions measures are not relied upon, in error, to support restrictions on the rights of individuals or entities.

De-listing notifications

49. As discussed above, the Ombudsperson is mandated to send a notification to individuals or entities added to the Consolidated List by the Al-Qaida and Taliban Sanctions Committee. Further, in the context of a successful de-listing application considered by the Committee with the assistance of the Ombudsperson, there is a similar mandate for the Ombudsperson to notify the petitioner of the de-listing. The only instance of listing or de-listing where the Ombudsperson does not send any independent notification is those cases where the Committee decides on a de-listing without the Ombudsperson having been involved. Given the intent to ensure that individuals and entities receive notifications of Committee decisions which affect them, it would seem logical that the Ombudsperson also be mandated to send a separate notification to an individual or entity in all cases of de-listing.

Reasons for de-listing

50. Currently, whether in the context of a case considered by the Ombudsperson or not, the Committee is not mandated to provide factual reasons for a de-listing. Even in the early stages of the work of the Ombudsperson, it is evident that such information would be very useful. Information as to the basis for a de-listing in one case may be of importance in assessing other cases. These reasons would also be helpful to the Ombudsperson in developing relevant observations for the Committee and in ensuring consistency in analysis. Further, to the extent that the sanctions process is intended to encourage a change in conduct, a description of facts that led to de-listing could guide the Ombudsperson in the context of dialogue with petitioners and provide examples for listed individuals and entities generally. For these reasons, it would be helpful if consideration were given to providing for reasons to be given by the Committee in cases where de-listing is granted.

Non-disclosure of the identity of designating States

51. One potential impediment to the delivery of effective due process through the Office of the Ombudsperson is the possibility of confidentiality restrictions that would prevent disclosure of the identity of the designating State to the petitioner and

to relevant States involved in the case. At the moment, the identity of the designating State or States is confidential and the Ombudsperson can only disclose the information after seeking and obtaining the consent of the relevant designating State or States. It remains discretionary to those States as to whether to permit disclosure.

52. A petitioner may face a significant disadvantage in answering a case without knowing the identity of the State or States that proposed the listing. This is particularly the case since, factually, this could be a point that the petitioner would wish to address in responding to the case against him or her. To the extent that the Ombudsperson is unable to disclose that information and to openly engage with the petitioner about the nature of the case against him or her, it constitutes a potential impediment to due process. In addition, it may also be necessary that other States involved in the case be advised as to the designating State or States in aid of drawing out all the relevant information in the case. For these reasons, which relate to the effectiveness of the procedures and the scope of due process, it is urged that consideration be given to empowering the Ombudsperson to disclose the identity of the designating State or States to the petitioner and to relevant States, as necessary in the specific context of a de-listing application.

Resources

53. The newly created Office of the Ombudsperson was originally mandated for an 18-month term. If that mandate is to be renewed, consideration should be given to providing the Office with appropriate resources, commensurate with its responsibilities and case load. Currently the Ombudsperson is ably assisted in her tasks by staff members of the Department of Political Affairs United Nations Secretariat, to the extent feasible given the independence of her functions and the competing demands on Secretariat staff. This help is invaluable but limited. The proper consideration of each petition requires considerable time and resources. The existing cases are already taxing the resources to the maximum and it is anticipated that this case load will continue to grow. In addition, there are the other significant responsibilities and activities outlined in the present report that are important to the advancement of the Office and the enhancement of the fairness and clarity of the Al-Qaida and Taliban sanctions process. In the view of the Ombudsperson, there is urgent need at this stage for a dedicated administrative assistant and a senior-level legal professional to assist with the legal research and analysis central to the work of the Office.

54. In addition to human resources, while travel requirements are not extensive, sufficient travel funds are essential for outreach work and, more importantly, for operational activities such as petitioner interviews or accessing and reviewing case information. Thus, a reasonable travel budget independently administered by the Ombudsperson is imperative to the effective operation of the Office.

55. Further, it is fundamental to the fairness of the process that individuals and entities included in the Consolidated List are able to communicate with the Ombudsperson and, through her, with the Committee in a language which they understand. Thus, provision must be made for resources to translate essential material received or to be sent into languages other than the official languages of the United Nations.

Appendix I

A. Procedure for requests for de-listing submitted to the Office of the Ombudsperson

An application for de-listing will be considered in accordance with the detailed process outlined in annex II to Security Council resolution 1904 (2009).

I. Preliminary determinations

The procedure for de-listing begins with a preliminary determination by the Ombudsperson that the request properly addresses the designation criteria applicable to the Al-Qaida and Taliban Sanctions Committee Consolidated List. Specifically, the request should set out the reasons or justification for de-listing, taking into account the acts or activities which indicate that an individual or entity is associated with Al-Qaida, Usama bin Laden or the Taliban. These include the following:

1. Participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, or on behalf of, or in support of;

2. Supplying, selling or transferring arms and related material to;

3. Recruiting for;

4. Otherwise supporting acts or activities of Al-Qaida, Usama bin Laden or the Taliban or any cell, affiliate, splinter group or derivative thereof.

The Ombudsperson must also determine initially whether the request constitutes a new or repeat request. In the latter case, the Ombudsperson must be satisfied that additional material is being provided on this occasion. This requirement is only applicable to repeat requests to the Ombudsperson. Where a previous request has been made through the Focal Point or otherwise, the request to the Office of the Ombudsperson will be considered as an initial one.

II. Process for consideration of the request

Unless the request is returned on either of these grounds, it will proceed to be assessed in a three-phase process.

Information-gathering

The information-gathering phase is designed to allow the Ombudsperson to collect as much detailed information of relevance to the de-listing request as possible. This is essential to ensure that the Committee has before it all pertinent material in deciding on the request. The Ombudsperson will distribute the request to the Sanctions Committee, the Designating State, State(s) of nationality/residence, the Monitoring Team (a group of experts which assists the Committee) and other relevant States or United Nations bodies, and follow up by engaging with these States and bodies in an effort to assemble all relevant information about the request. The initial period for information-gathering is two months, which period will be

calculated starting from the date on which the request is transmitted to the Committee. While the aim is to collect the information as expeditiously as possible and within the two-month period, the Ombudsperson can extend the period for up to two additional months. This will be done where the Ombudsperson determines it is necessary in order to ensure that all germane information is gathered.

Dialogue and report

The information-gathering phase is followed by a two-month period during which the Ombudsperson will facilitate engagement and dialogue, with the petitioner and, by relaying questions and responses, between the petitioner, relevant States, the Committee and the Monitoring Team.

This critical phase provides an opportunity for the Ombudsperson to explore in detail with the petitioner, the various aspects of the case. It gives the petitioner an opportunity to be heard, to address issues and answer questions with the goal of ensuring that his or her position is fully explained and understood.

In addition to putting his or her own queries or requests for clarification and additional information, the Ombudsperson will pose any questions or convey requests from the Committee, relevant States and the Monitoring Team and coordinate with them with respect to replies, to be satisfied that the salient issues are thoroughly canvassed and examined.

The time period for dialogue can also be extended for up to two months. Again the decision to extend will depend on whether the Ombudsperson determines that further time is needed to ensure a comprehensive dialogue and exchange on the relevant issues of the case.

During this same time period, the Ombudsperson will prepare a report on the de-listing request. While in accordance with Security Council resolution 1904 (2009), the Ombudsperson can seek the help of the Monitoring Team in preparing the report, by policy decision the report will be prepared independently by the Ombudsperson.

The report will provide a comprehensive review of the case for the Committee's consideration. The report will summarize the information gathered, specifying the sources of it, as appropriate, and describe the interaction and activity undertaken by the Ombudsperson with respect to the request. This will include a description of any interaction with the petitioner. The report will set out the principal arguments concerning the de-listing request, based on an analysis of all the available information and the Ombudsperson's observations.

Committee discussion and decision

The Committee will review the report during a 30-day period, after which the de-listing request will be placed on the Committee agenda. The Ombudsperson will present the report in person to the Committee and answer questions regarding the same. After consideration, the Committee will decide on the de-listing request.

III. Communication of decision

If the Committee grants the de-listing request, that decision will be communicated to the Ombudsperson, who will inform the petitioner. The petitioner's name will be removed from the Consolidated List.

If the Committee rejects the de-listing request, that decision will be conveyed to the Ombudsperson along with, as appropriate, explanatory comments, any further relevant information about the decision and an updated narrative summary of the reasons for listing. The Ombudsperson will communicate the decision, along with, as appropriate, information about the process and publicly releasable factual information and the information about the decision as communicated by the Committee, to the petitioner.

IV. Confidentiality

In accordance with the procedure established under annex II to Security Council resolution 1904 (2009), a de-listing request submitted to the Ombudsperson will be shared with the Committee, relevant States and other United Nations bodies. In addition, some additional disclosure of the request may be necessary as part of the information-gathering process. Aside from these operational matters, as a general policy, the Ombudsperson will treat the requests submitted as confidential.

Petitioners are obviously not bound by any confidentiality restrictions with regard to their applications and they may therefore choose to publicly disclose and discuss a de-listing request. Should a petitioner choose to make his or her request public, the Ombudsperson will thereafter treat the existence and status of the request as a public matter. However, the Ombudsperson will not publicly comment on or discuss the details of any pending case.

B. Application for de-listing

An individual or entity seeking de-listing (petitioner) from the Consolidated List of the Security Council Al-Qaida and Taliban Sanctions Committee may submit a request directly to the Office of the Ombudsperson.

I. Format and transmission

There is no prescribed format for the request. What is important is to include all the necessary information as described in section II below. While it is preferable for the request to be submitted in, or accompanied by a translation into, one of the six official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish), requests in other languages will be accepted.

The request may be transmitted by any means which affords a record in writing — post, e-mail, or fax. For requests submitted by post, in case clarification or follow-up is required, it would facilitate the process if a return e-mail address or fax number were included or if that is not possible, a phone number through which the petitioner can be contacted. The request may be sent to the following address:

Office of the Ombudsperson
Room TB-8041D
United Nations
New York, NY 10017
United States of America
Tel: +1 212 963 2671
Fax: +1 212 963 1300/3778
E-mail: ombudsperson@un.org

II. Content

A request for de-listing should make reference to the relevant entry in the Consolidated List and should include the following information:

1. Identification information for the petitioner.

In the case of an individual especially:

(a) Full name, including any middle names or initials, father and grandfather's names as may be applicable, as well as any other names or pseudonyms used by the petitioner;

(b) Date and place of birth;

(c) Nationality — if more than one, please provide all;

(d) State of current residence;

(e) Any other information that may help to clarify any issues of identity.

In the case of an entity especially:

(a) Full name of the entity, including any alternative names used;

(b) If applicable, place and date of incorporation/registration;

(c) State(s) of current operation(s);

(d) Any other information that may help to clarify any issues of identity.

2. A statement of the reasons or justification for de-listing. This section should be as detailed as possible. The petitioner should address any specific designating criteria set out in the Consolidated List entry or in the narrative summary (if applicable). If, in addition, the petitioner has any information or suspicions as to the basis for his or her inclusion on the Consolidated List, those should be included along with any explanations, arguments or submissions relating to the same.

3. Where available, copies of any documents or other supporting or explanatory material.

4. If applicable, a description of any court proceedings or litigation of relevance to the de-listing request.

5. If applicable, a reference to any previous request for de-listing made by the same petitioner through the Focal Point or otherwise.

Note: While resolution 1904 (2009) sets out a procedure for repeat requests, that process will be applicable only to repeat requests to the Ombudsperson. Thus, where a previous request has been made through the Focal Point or otherwise, the request to the Office of the Ombudsperson will be considered as an initial one.

6. Where the request is being made by a person acting on behalf of a listed person, a document signed by the petitioner, authorizing the person to act on his or her behalf.

III. Further information

Should you require assistance or further information please contact the Office of the Ombudsperson at: ombudsperson@un.org.

Appendix II

Status of cases

Case 1. (Status: dialogue phase)

Date	*Description*
28 July 2010	Transmission of case 1 to the Al-Qaida and Taliban Sanctions Committee (the Committee)
28 September 2010	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 28 October 2010
28 October 2010	Written update at the end of the extended information-gathering period submitted to the Committee
13 December 2010	Written update on the dialogue period submitted to the Committee; dialogue period extended to 28 February 2011
28 February 2011	Expected date of submission to the Committee of a comprehensive report on case 1

Case 2. (Status: dialogue phase)

Date	*Description*
30 September 2010	Transmission of case 2 to the Committee
30 November 2010	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 11 January 2011
14 January 2011	Written update at the end of the extended information-gathering period submitted to the Committee

Case 3. (Status: information-gathering phase)

Date	*Description*
3 November 2010	Transmission of case 3 to the Committee
6 January 2011	Written update on the information-gathering period submitted to the Committee; information-gathering period extended to 14 February 2011

Case 4. (Status: information-gathering phase)

Date	*Description*
6 December 2010	Transmission of case 4 to the Committee

Case 5. (Status: information-gathering phase)

Date	*Description*
30 December 2010	Transmission of case 5 to the Committee

Case 6. (Status: information-gathering phase)

Date	*Description*
14 January 2011	Transmission of case 6 to the Committee